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September 13, 2021

VIA ECF

Hon. Lorna G. Schofield
United States District Court Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

RE: *US Airways, Inc. v. Sabre Holdings Corp., et al.*, No.
1:11-cv-02725, Uncontested Requests Regarding Summary
Judgment Exhibit Limits, Sealing, & *Daubert* Motion Page Limits

Dear Judge Schofield:

We represent Defendants (collectively, “Sabre”) in the above-captioned matter, and submit this letter with Plaintiff’s (“US Air”) consent. As the Court may recall, motions for summary judgment are due to be filed by September 17, 2021, and *Daubert* motions are due to be filed by February 18, 2022. As further explained below, Sabre intends to file a *Daubert* motion to exclude testimony of US Air’s expert on damages concurrently with its forthcoming summary judgment motion because resolution of the *Daubert* motion could be dispositive with respect to US Air’s proof of damages.

Concerning Sabre’s forthcoming summary judgment and *Daubert* motions, and as set forth in more detail below, the parties respectfully request that the Court permit them to: (i) exceed the limit of 15 exhibits in support of, and in opposition to, the summary judgment motion; (ii) provisionally file the briefing on the summary judgment and *Daubert* motions, along with all supporting documents, under seal

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until 30 days after the completion of all briefing on those motions; and (iii) submit briefing related to the *Daubert* motion on the same schedule as the summary judgment briefing, and to exceed this Court's page limits for memoranda of law related to motions in limine.

Enlargement Regarding Summary Judgment Exhibits

Sabre notes that it does not seek an enlargement of the 25-page limit for its memorandum of law in support of its forthcoming summary judgment motion. However, the parties request that each party be permitted to submit up to 30 exhibits in connection with the summary judgment briefing. The parties request this enlargement out of an abundance of caution, and will make every effort to exceed the ordinary exhibit limit by as few exhibits as possible. Notably, the Court granted a similar uncontested request to enlarge the limit on summary judgment exhibits in connection with earlier summary judgment motion practice in this case. (ECF Nos. 192-193.)

Provisional Filing Under Seal

The parties request that they be permitted to provisionally file the briefing on forthcoming summary judgment and *Daubert* motions, along with supporting documents (including 56.1 statements and exhibits), under seal until 30 days after the completion of all briefing on those motions. The parties make this request in an abundance of caution because the papers related to these motions will include third-party confidential material and material that the other party has marked as confidential—all of which would, per the operative protective order, require that these materials be filed under seal. (*See* ECF No. 123.)

Allowing these papers to be filed provisionally under seal will provide the parties time to meet and confer (with each other and third parties) regarding the material designated as confidential, and to propose minimally-redacted public filings. The parties note that the information contained in the documents they seek to file provisionally under seal is the same—or similar to—information that the Court previously permitted to be redacted. (*See, e.g.*, ECF Nos. 245 (redacted summary judgment opinion); 250 (order granting redactions); 267 (redacted 56.1 statement).)

Enlargement Regarding Motion to Exclude Testimony of Dr. Abrantes-Metz

Finally, Sabre intends to file a motion to exclude certain testimony of US Air's damages expert, Dr. Rosa Abrantes-Metz, concurrently with its motion for summary judgment. The parties request that they be permitted to file memoranda in support of and in opposition to the *Daubert* motion of no more than 15 pages each;

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and that Sabre be permitted to file a reply brief of no more than 7 pages. The parties request that briefing for this *Daubert* motion follow the same schedule as briefing related to Sabre's motion for summary judgment.

The parties request these enlargements because the issues to be decided are both technical in nature (Dr. Abrantes-Metz submitted two reports totaling over 150 pages without appendices) and implicate the Supreme Court's decision regarding two-sided transaction platforms in *Ohio v. American Express*, 138 S. Ct. 2274 (2018). While Sabre expects to file additional motions in limine (including, potentially, additional *Daubert* motions) no later than February 18, 2022 (*see* ECF No. 992), Sabre plans to file its motion to exclude certain testimony of Dr. Abrantes-Metz concurrently with its summary judgment motion because it believes that the motion, if granted, could be dispositive of this case. Earlier resolution of this *Daubert* motion would thus promote judicial economy and the efficient administration of this case.

We thank the Court for its consideration of these requests.

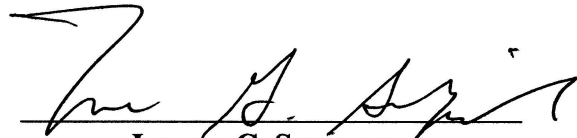
Respectfully submitted,

/s/ Boris Bershteyn
Boris Bershteyn

cc: Counsel for US Airways, Inc., via ECF

Application GRANTED. The parties shall submit no more than thirty exhibits each in support of, and in opposition to, the summary judgment motion, and each party shall submit no more than 225 pages of exhibits. The parties shall provisionally file the briefing on the summary judgment and *Daubert* motions, along with all supporting materials, under seal until thirty days after the briefing on all those motions, at which time the parties shall file their motions to seal and proposed redactions, if any. The parties shall file the *Daubert* motion on the same schedule as the summary judgment motion. The memoranda in support of and in opposition to the *Daubert* motion shall not exceed fifteen pages, and the reply memorandum shall not exceed seven pages.

Dated: September 14, 2021
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE